U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 03 151 51772 Office: CALIFORNIA SERVICE CENTER Date: MAY 2 5 2005

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal because an appeal brief was not contained in the record of proceeding. The petitioner has filed a motion to reopen on the grounds that the required brief was submitted to the director, but through no fault of the petitioner, the brief was not incorporated into the record. The motion will be granted and the appeal, including the brief, will be considered on its merits. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner worked as a senior research scientist at Chugai Pharma U.S.A. LLC. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
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> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
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> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

> burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The intrinsic merit and national scope of the petitioner's occupation (synthetic chemistry with medical applications) are not in question. At issue is whether the benefit arising from this petitioner's work exceeds that of others in the field to such an extent that it is in the national interest to waive the job offer/labor certification requirement that, by law, normally attaches to the classification sought.

Counsel describes the petitioner's research:

> For approximately ten years, [the petitioner] has been engaged in a number of important research projects for drug discovery. . . .[The petitioner] successfully established for the first time in chemistry an efficient and concise method for the synthesis of 5-hydroxy benzofuran analogues, which stands for a significant contribution to the chemical science, since it is a huge challenge to all the synthetic chemists to put a hydroxy group on 5-position of benzofuran scaffold. [The petitioner] also successfully developed for the first time in the world the auxiliary-aided asymmetric [redacted] reaction to the synthesis of phosphynyl peptidomimetics. In this research, [the petitioner] remarkably brought about a chiral induction by auxiliary yielding excellent diastereomeric and asymmetric induction before his work. With [the petitioner's] invention chemists in the world can now prepare each of four isomers of the phosphinyl pseudodipeptic unit at any scale. Accordingly, [the petitioner] proposed a mechanism for the asymmetric induction in [redacted] reaction of phosphinic or aminophosphinic acids with acrylate derivatives. [The petitioner] thus set up a guideline to all chemists in the field. [The petitioner's] work is internationally acclaimed to be a major breakthrough in the field.

The petitioner submits seven witness letters. Two of these witnesses are on the faculty of the University of Southern California (USC), where the petitioner earned his doctorate; two others worked with the petitioner at Procter & Gamble in 2001-2002; and two witnesses work with the petitioner at Chugai Pharma. The seventh witness is a consultant at Procter & Gamble. The distribution of witnesses, therefore, does not show that the petitioner's work has attracted attention outside of his own circle of collaborators and mentors.

Thomas Arrhenius, Ph.D., senior director of chemistry at Chugai Pharma, states that the petitioner "has made significant contributions to our cardiovascular drug discovery program, focused on the discovery of a novel

therapeutic agent for the treatment of stable angina. . . . I believe [the petitioner's] research achievements are truly outstanding, and his contribution and potential are significantly above that of other highly skilled researchers in the field." [redacted], project leader and scientific investigator at Chugai Pharma, states that the petitioner "has creatively designed a new class of enzyme inhibitors, and successfully developed practical, efficient methods for the preparation of these inhibitors with unique structures, which are definitely huge challenges to all the synthetic chemists."

[redacted] research fellow in medicinal chemistry and discovery at Procter & Gamble, supervised the petitioner's work at that company. [redacted] states that the petitioner "quickly built an expertise that was recognized worldwide, as is evidenced by his publications." Publication itself does not demonstrate recognition; rather, one must consider the scientific community's response to the petitioner's published work. Dr. [redacted] states that the petitioner's "most important" work is "his fundamental contribution to the peptidomimetic research field where he . . . developed an efficient and stereoselective approach to the synthesis of phosphinic acid dipeptide analogs. This is the first known practical asymmetric synthetic method in this field. . . . . [The petitioner's] paper has been cited three times in a very short time." [redacted] concludes by asserting that the petitioner "has become internationally recognized for his contributions to several fields of new drug design chemistry, classical synthetic organic, heterocyclic, phosphorus, and peptidomimetic chemistry through his accomplishments and publications."

Professo[redacted]f the University of Rochester was D[redacted] advisor when [redacted] was a graduate student at that university. Since 1988, Pr[redacted] has served as a consultant for Procter & Gamble. Prof. [redacted] states that the petitioner is "a young leader in the important area of organophosphorus chemistry," and that his "creativity and productivity was exemplified by generating two key U.S. Patent applications" arising from obesity studies at Procter & Gamble. Prof[redacted] praises the petitioner's publication record; his *curriculum vitae* indicates that he collaborated on one of the petitioner's published articles. Pro[redacted] concludes that the petitioner's "research ability and potential are significantly above that of other well-qualified scientists."

[redacted], now an adjunct professor at Wright State University, worked at Procter & Gamble at the same time as the petitioner. Dr[redacted] states that the petitioner's most important contribution was that he "developed a novel series of challenging Melanocortin agonists with a dialkyl piperidine scaffold," which "have produced a long-lasting inhibition of food intake" and therefore may have value as anti-obesity drugs.

Professor [redacted] who was on the petitioner's Ph.D. committee at USC, states that the petitioner "is a gifted researcher" who "is currently working on the novel approaches for the treatment of cardiovascular diseases." Professor [redacted] who supervised the petitioner's doctoral studies at USC, states that the petitioner "prepared an impressively large number of novel compounds as candidates for biological screening. . . .He was the first to study the systematic preparation of thioPFA methyl esters. . . . He was also the first to study several important physical properties of such compounds, specifically certain nuclear magnetic resonance (NMR) properties. In this area, he is certainly one of the best experts in the world."

When the witnesses describe the petitioner as a leading researcher in his field, they appear to define his "field" not as "chemistry" or "organic chemistry," but as an extremely narrow subspecialty thereof.

The petitioner submits copies of his published work and patent applications, along with evidence of credentials such as memberships in associations. Counsel states: "As acknowledgement of his research excellence and achievements, [the petitioner] has been accepted as an invaluable member of" the American

Chemical Society (ACS) and the New York Academy of Sciences (NYAS). The record affirms the petitioner's membership in these associations, but there is nothing from either association to indicate that the petitioner's memberships constitute "acknowledgement of his research excellence and achievements." If membership is not contingent on these factors, then such hyperbolic language can only limit counsel's credibility.[1]

With regard to the reputation and influence of the petitioner's published work, the petitioner submits data from a citation index, showing that one of the petitioner's articles has been cited three times. One of these citations is a self-citation by the petitioner; another citation is by the petitioner's collaborator, [redacted] This leaves one independent citation of the petitioner's work, in a review article that discussed 239 such articles. The objective evidence simply does not demonstrate that anyone who has not worked with the petitioner attaches particular significance to the petitioner's work.

The director instructed the petitioner to submit further evidence to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. In response, the petitioner has submitted two further witness letters. The letter from Professor [redacted] of the University of Rochester, essentially repeats (sometimes word-for-word) sections of the earlier letter from Prof [redacted] of that same university. (Very similar language also appears in the petitioner's own research plan.) [redacted] of the National Cancer Institute, states: "Among many different but talented people whom I have studied and worked with over the past years, I can honestly say that [the petitioner] is one of the very best. [The petitioner] has demonstrated a high level of productivity and achievements, which are unusual for a person at his stage of professional development."

The director denied the petition, stating that the petitioner has not set himself apart in his field to an extent that would justify the special benefit of a national interest waiver. On appeal, the petitioner submits copies of articles and patent documents and a new brief from counsel.

In the appellate brief, counsel lists achievements already discussed. Counsel states that the petitioner's work has led to four patent applications, two of which have already been approved; the other two "have entered the second processing stage" because "these 2 patents are found unique and significant." The United States Patent and Trademark Office receives hundreds of thousands of patent applications per year, and approves roughly half of them.[2] The petitioner's involvement in four patent applications does not make him stand out in his field. An alien cannot secure a national interest waiver simply by demonstrating that he or she holds a patent. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Matter of New York State Dept. of Transportation* at 221, n. 7.

Counsel observes that the petitioner has published several articles. The prolific publication of articles does not automatically correlate with impact in the field, and the number of articles does not inherently increase the importance of the information contained in those articles. We must concern the reaction of the field to these articles. Counsel professes agreement with the principle that "citation is indicative of one's research impact

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[1] Regular membership in ACS is available to anyone with a "bachelor's degree (or higher) from an ACS-approved school in a chemical science or chemical engineering, or 3 years of employment in a chemical science if the degree is not from an ACS-approved school." http://membership.acs.org/l/localsections/silver%20bullet/7.Membership.pdf. Membership in NYAS "is open to all active professional scientists, physicians, engineers, students, and other individuals who share the Academy's interests." http://www.nyas.org/membership/main.asp.

[2] Statistics are available at http://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.pdf. In 2003, the most recent year for which statistics are provided, 366,043 patent applications were filed, and 187,017 were approved.

or recognition," and asserts that the appeal includes "5 articles by independent researchers" citing the petitioner's work. Counsel adds that "many of the petitioner's key findings are only included in his patents documentation, which are confidential in the industry at the current stage." Undisclosed, confidential findings clearly cannot have had any widespread impact, and the record does not show that these confidential findings exceed in importance similar findings set forth in thousands of other patent applications each year.

With regard to the five articles containing citations of the petitioner's work, three were submitted previously, including one self-citation by the petitioner and one self-citation by the petitioner's collaborator Dr [redacted]. Self-citation is common and accepted among researchers, but citing one's own previous work does nothing to establish that such work has influenced *other* researchers. The three independent citations do not single out the petitioner's work as being especially important. Indeed, all three of these articles cite the petitioner's work jointly with other published articles, implying that the petitioner's work duplicated that of other researchers, or at least was so similar to the work of others as not to warrant separate discussion.

Several witnesses have described the petitioner's specific achievements, without demonstrating that these achievements are objectively more important than the work of other trained professionals in the petitioner's specialty. For instance, the assertion that the petitioner was the first to synthesize a particular chemical is not, by itself, remarkable unless it is shown that synthesis of chemicals is unusual in the specialty of synthetic chemistry. Similarly, the petitioner has not established the impact of the patented or patent-pending innovations with which he has been involved. Specifying the nature or use of a compound is not the same thing as demonstrating its significance within the field, because it is assumed that whenever chemists seek to synthesize a chemical, they do so because they anticipate that the chemical will be of some use.

Counsel, in describing the petitioner's achievements and credentials, has put forth numerous exaggerations, which diminish the credibility of the claims thus advanced. For instance, counsel has attached considerably more importance and significance to publication, patent application, and membership in the ACS and NYAS than the evidence warrants. An objective review of the evidence indicates that the petitioner's work has attracted little notice outside of those who have supervised or collaborated with him. While the petitioner has engaged in a productive and useful career, the evidence of record does not support the conclusion that the beneficiary stands out from his colleagues to an extent that would justify the special benefit of a national interest waiver.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.